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6 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

7 DARREL PATRICK WILLIS,

8 Petitioner,

9 v.

10 NICK KISER,

11 Respondent.  
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CASE NO. 3:17-CV-05772-RJB

ORDER ADOPTING REPORT AND  
RECOMMENDATION

13 This matter comes before the court on the Report and Recommendation of Magistrate  
14 Judge J. Richard Creatura (Dkt. 12) and on the petitioner's Objections to the Report and  
15 Recommendation (Dkt. 13). The court is familiar with the records and files herein. For the  
16 reasons stated below, the Report and Recommendation should be adopted and the matter should  
17 be dismissed.

18 This matter is confusing because it was brought under a "Petition Under 28 U.S.C. 2254  
19 for Writ of Habeas Corpus by a Person in State Custody" Dkt. 4. Section 2254 only applies to  
20 prisoners currently in state custody, on a current conviction. The issues raised by the defendant  
21 do not reach the reasons that he may be in state custody now, but address prior proceedings.

22 Petitioner's request made in the § 2254 petition reads as follows: "Therefore, petitioner  
23 asks that the court grant the following relief: An (sic) finding that the violations were unlawful  
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1 and any time served as a result of those violations be credited to this current D.O.C. time I am  
2 serving and allow the § 1983 action to move forward or any other relief to which petitioner may  
3 be entitled.”

4 The relief requested is not available under a § 2254 petition.

5 The Report and Recommendation of the Magistrate Judge should be ADOPTED. The  
6 respondent here, Mr. Kiser, does not have Mr. Willis in custody. The § 2254 claim is moot.  
7 The § 2254 claim should be DENIED without leave to amend. Because petitioner does not make  
8 a substantial showing of a denial of a constitutional right, a certificate of Appealability should  
9 not issue.

10 Mr. Willis may be intending to sue Mr. Kiser for the events surrounding his earlier state  
11 conviction and sentence. Such a claim may be brought as a civil rights claim against an  
12 individual but cannot be raised in a § 2254 petition. The court makes no finding regarding the  
13 merits of any claim that petitioner may have under § 1983 or any other law.

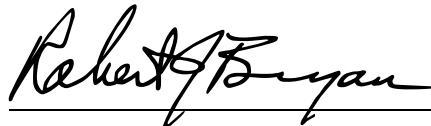
14 For the foregoing reasons it is now ORDERED that:

15 (1) The Court adopts the Report and Recommendation.

16 (2) The Court GRANTS respondent's motions and dismisses petitioner's habeas  
17 petition without leave to amend.

18 (3) A certificate of appealability should not be issued.

19 **DATED** this 26<sup>th</sup> day of February, 2018.

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22 ROBERT J. BRYAN  
23 United States District Judge  
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